Supreme Court, U.S.
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No. 88-2103

In The
Supreme Court Of The United States

OCTOBER TERM, 1988

ADAM JOHN,
Petitioner,

v.

STATE OF CONNECTICUT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT
OF CONNECTICUT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this court review the decision of the Supreme Court of the State of Connecticut affirming a trial court's ruling that, based on the facts of the case before it, evidence not disclosed to the defense was not exculpatory and that its non-disclosure did not affect the outcome of trial.

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RULE INVOLVED

RULES OF THE SUPREME COURT OF THE UNITED STATES

Rule 17.1

A review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered.

(a) ...

(b) When a state court of last resort has decided a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals.

(c) When a state court or a federal court of appeals has decided an important question of federal law which has not been but should be,

settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this court.

STATEMENT OF THE CASE

The respondent adopts the following excerpts from the Connecticut Supreme Court's opinion deciding the appeals of the respondent and his co-defendant, Eric Seebeck, which is set forth in its entirety in Appendix A of the Petition:

> During the late morning of Wednesday, June 18, 1980, the defendants visited the home of Morris Frost, an acquaintance. While the three were sitting at Frost's kitchen table, Seebeck stated that he had been arrested that morning and that he was going to leave the state. Seebeck told Frost that he knew where he could "get a car from a seventy year old queer in Waterford."
>
> On Thursday, June 19, 1980, Ponte Patterson, the victim, picked up his dog from a veterinarian clinic. The next morning, on Friday, June 20, 1980, at about 10 a.m., Patterson phoned the veterinarian to discuss the condition and treatment of his dog. At noon on that Friday, M, Patterson's friend, phoned Patterson at Patterson's home in Waterford. The two spoke briefly, at which time Patterson told M that he could not speak with him at that time, and that he would call back M in one half hour. When Patterson did not

return the phone call, M phoned Patterson at 12:30 p.m. and again at 12:45., getting no answer each time. M phoned Patterson on Saturday and Sunday as well, still getting no answer.

Early Friday afternoon, on June 20, 1980, the defendants arrived at the home of Seebeck's parents in Oakdale, Connecticut. Prior to this visit, Seebeck, who did not live with his parents, had seen his parents infrequently. Seebeck informed his parents that he was leaving the state to "get his head on straight." The defendants left the house, crossed the street, and drove away in an old green automobile.

At 5:15 p.m. on that Friday, a green 1965 Buick was found abandoned and out of gas on the shoulder of the westbound lane of Interstate 84 in Brewster, New York. Brewster is a two and one-half hour drive from Waterford. The car was registered to Ponte Patterson; it had not been reported stolen. The defendants' fingerprints were found inside the car, Seebeck's on the driver's side and John's on the front passenger's side.

After abandoning the car in Brewster, the defendants continued westward. On June 21, 1980, John called his mother from Bloomburg, Pennsylvania, and on June 22, 1980, he called his father from the same location. On Tuesday,

June 24, 1980, between 2 p.m. and 3 p.m., Michael Adams, who was traveling on the Ohio Turnpike, picked up the defendants, who were hitchhiking, in Sandusky, Ohio, and drove them to Andalusia, Illinois. The defendants had no money and had with them only the clothes that they were wearing and two or three blankets. The defendants rode with Adams for seven hours, during which time Seebeck sat in the front passenger seat and John sat in the middle of the back seat.

During the course of the trip, Adams asked the defendants how they had gotten as far as Ohio. One of the defendants responded that they had gotten a car from an old man who lived out in the woods, that they had run out of gas in New York, and that they had hitchhiked from New York to Ohio. When asked by Adams whether the car had been stolen, John responded that the car was not stolen, because "the guy who owned it was dead." Seebeck did not respond to this statement. Adams then asked them how the owner of the car had died. Seebeck answered that he had died "of old age or something." Adams asked the defendants whether anyone else knew that the owner of the car was dead, to which question neither defendant responded.

On the same Tuesday morning, June 24, 1980, the body of Ponte Patterson, a seventy year old man,

was found by two of his cousins in the backyard of his house, located in a wooded area in Waterford. One of them contacted the police, who arrived at Patterson's house at about 10 a.m.

Examination of the area in front of the victim's house revealed that a struggle apparently had taken place there, because the victim's hat, bow tie and camera were strewn about. Near the front door, the police found an area of matted down grass on which there was a bloodstained brick, and from that area, there were drag marks along the right side of the house to the rear corner where the body was found. The victim's body and his clothing were in a position that indicated that he had been dragged by his feet. The victim's right front pants pocket, in which he ordinarily kept his keys, was inside out and empty. No keys to his car or house were found at the scene, inside the house, or on his person, and the victim's car was missing. Several bloodstained bricks were found on the ground near the victim's head.

In the front yard, in the area where the struggle had occurred, the police found a bent copper bracelet, which looked "just like" a copper bracelet that a friend of Seebeck's had given back to Seebeck several weeks earlier. In the victim's mailbox, across the street from his house, the police found mail that had

been delivered on Friday, June 20, between 2 and 2:30 p.m., and was still in the box on June 24, even though Patterson usually picked up his mail from the box every day.

An autopsy revealed that the victim had suffered extensive injuries to the head, a fractured skull, a broken right arm, a dislocated wrist, four stab wounds in the back, and six fractured ribs. The cause of death was a depressed skull fracture with laceration of the brain, caused by an object such as the corner of a brick. There was considerable maggot activity on the victim's head and body.

Stephen Adams, an assistant medical examiner, went to the scene to investigate the circumstances of the victim's death. On the basis of his observations of the victim's body, the yard, and surrounding locations, Adams concluded that Patterson had died two to four days before his body was discovered on June 24. Catherine Galvin, the acting chief medical examiner, who had performed the autopsy, examined photographs of the victim's body taken at the scene, inspected temperature records and viewed the actual scene. She concluded that within reasonable medical probability, the time span between the victim's death and the delivery of his body to the medical examiner's office on June 24 was between two and four days. Wayne Lord, a forensic

entomologist who had been consulted by the office of the chief medical examiner, concluded that the victim's death occurred sometime between the late afternoon of June 19 and the early afternoon of June 21.

. . . .

The defendants presented several witnesses who testified that they had seen the victim alive after Friday, June 20, 1980. The jury, however, as the sole judge of the credibility of witnesses, was entitled to reject this testimony if it did not find it credible. State v. Dudla, 190 Conn. 1, 7, 458 A.2d 682 (1983). Further, this testimony was not uncontradicted. The state not only demonstrated inconsistencies in the testimony of these witnesses, but also presented considerable evidence relating to the time of death. The state's evidence was sufficient to support the jury's finding in this case and included the following testimony. M said that he had spoken with the victim shortly before noon on June 20, 1980. The victim did not call back in thirty minutes as promised and did not answer his phone when M called back at 12:30 p.m. and 12:45 on that date. The victim did not answer the phone when others called him from June 21 to June 24. The victim's June 20 mail, which was delivered between 2 and 2:30 p.m. on that day, was

still in the victim's mailbox on June 24, even though the victim customarily removed his mail every day. The medical examiner estimated that the victim had died between June 20 and June 22 and Wayne Lord, a forensic entomologist, testified that the victim most likely died during the late morning or early afternoon of Friday, June 20, 1980.

The state also presented evidence to prove that the victim's car had been found abandoned at 5 p.m. on June 20, in a location two and one-half hours from Waterford, with the defendants' fingerprints inside the car. The state proved that when the defendants were with Michael Adams, before the discovery of Patterson's body was generally known, they were aware that the owner, an "old man who lived in the woods," was dead. On the basis of this evidence and the reasonable inferences drawn therefrom, the jury could have concluded that the victim was killed at about noon on June 20, 1980, that his car was stolen shortly after he was killed, and that the only way the defendants could have known of the victim's death was through their participation in the homicide of the victim, the theft of his car, and their immediate flight from the state in that car. Petition A-7 through A-10, A-12 through A-13.

After "M" testified on direct examination, the state gave the trial court a report of an interview with "M" asking that it provide the defense with copies of the report with the exception of two paragraphs which it claimed were irrelevant and not exculpatory. It asked the court to review the report and, if it agreed, to make the full report an exhibit and order it sealed, so that it would be available for review by an appellate court. The trial court agreed and ordered the full report sealed. The undisclosed portion was made available to petitioner's appellate counsel. On cross examination, "M" testified that he knew the victim was a homosexual, but denied having had homosexual relations with him. No where in the undisclosed portion of the report is there anything stating that "M" ever admitted to being a homosexual or engaging in homosexual relations with the victim or

anyone else.

REASONS FOR DENYING THE WRIT

The petitioner claims that the Connecticut Supreme Court, in addressing his claim that the undisclosed portion of the report, "chose to characterize the issue only in terms of whether Malone might have been the true murderer." (Pet. 5). The Connecticut Supreme Court did not so characterize the issue, but did in fact address the question of whether or not the withheld information could have been used for impeachment purposes and specifically ruled that it could not have been. (Pet. A-28 through A-29). His second reason is a claim that "The Connecticut courts have a long and disturbing history of sanctioning the concealment of exculpatory evidence." (Pet. 5). In fact, however, Connecticut courts have not hesitated to set aside convictions when exculpatory evidence was not made known

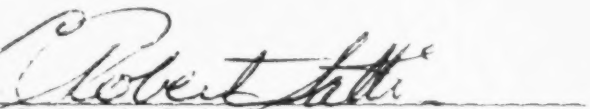
to defendants. State v. Cohane, 193 Conn. 474, 479 A.2d 736 (1984); Demers v. State of Connecticut, 209 Conn. 143, 547 A.2d 28 (1988).

The petitioner makes no claim that the Connecticut Supreme Court decided any question of law in a way conflicting with the decision of another state's court of last resort or of a federal court of appeals, nor does he claim that the Connecticut Supreme Court decided either an important and unsettled question of federal law or a federal question in a way conflicting with decisions of this court. The decisions below turned on its own facts which were very complex and did not rest on any failure to recognize and apply this court's rulings concerning exculpatory evidence as set forth in Brady v. Maryland, 373 U.S. 83 (1963) and Giglio v. United States, 405 U.S. 150 (1972).

CONCLUSION

For these reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,
The Respondent
STATE OF CONNECTICUT

BY 

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